UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOM ARMA, TOM ARMA STUDIO, INC. & TOM ARMA COSTUMES, INC.,	
Plaintiffs,	) ) Case No. 07-CV-10967
V.	)
BUYSEASONS, INC., BUYCOSTUMES & JALEM GETZ,	) Honorable Robert W. Sweet ) )
Defendants.	) ) )

#### **AFFIDAVIT OF JALEM GETZ**

- I, Jalem Getz, being duly sworn upon oath, state as follows:
- 1. I am an individual residing in the State of Wisconsin, within the area encompassed by the judicial district known as the Eastern District of Wisconsin, and a named defendant in the above-captioned cause of action. I have personal knowledge of the matters set forth herein, and if called as a witness in this matter I could and would testify to the same. I submit this affidavit in support of the Defendants' Motions to Dismiss or to Transfer Venue in this case.
- 2. I am employed as the President of Defendant Buyseasons, Inc. ("<u>Buyseasons</u>"), an internet costume retailer with its principal web site located at <u>www.buycostumes.com</u> (the "<u>Web Site</u>"). Buyseasons is a Delaware corporation with its principal place of business in New Berlin, Wisconsin. Buyseasons does not have (nor has it ever had) an office in the State of New York.

I understand that Plaintiffs have named "Buycostumes" as a defendant in this case. "Buycostumes" is merely the brand name for Buyseasons, Inc.'s Web Site. It is not a separate legal entity.

- 3. I do not own any shares of stock in Buyseasons. I have certain value appreciation rights in Buyseasons which are triggered by certain events such as a "change in control," but I do not have any direct ownership in Buyseasons. Buyseasons is a wholly owned subsidiary of Liberty Media, Inc. I own certain shares of stock in Liberty Media, Inc., but I am by no means a controlling shareholder of that company.
- 4. From May 2004 to November 15, 2007, Buyseasons and Plaintiff Tom Arma Costumes, Inc. were parties to an "Exclusive On-Line Distribution Agreement" (the "<u>Distribution Agreement</u>") by which Buyseasons distributed Tom Arma brand costumes on the Web Site. The Distribution Agreement expired on its own terms on November 15, 2007.
- 5. The Web Site was created and is maintained in the State of Wisconsin. Servers used by Buyseasons are located in Portland, Oregon. Any material related to this lawsuit which appeared on the Web Site was placed there by Wisconsin employees of Buyseasons.
- 6. I personally do not transact business in the state of New York. Specifically, I do not personally do or solicit business in the State of New York, nor do I engage in any other persistent course of conduct in New York. Since November 15, 2007, when the Distribution Agreement expired, I have been to New York only once for personal reasons having nothing to do with Buyseasons, the Plaintiffs, or their businesses.
- 7. Buyseasons has never acted as my personal agent in the State of New York or anywhere else. I personally do not derive substantial revenue from goods used or consumed, or service rendered, in New York. Nor do I personally derive substantial revenue from interstate or international commerce.
- 8. I do not reside in New York, nor do I own, use or possess any real property in New York.

9. To the best of my knowledge, Plaintiffs Tom Arma Costumes, Inc. and Tom Arma Studio, Inc. have been incorporated in the State of Arizona since June 2005. *See* Articles of Incorporation attached as Exhibit A. Since that time, Buyseasons payments made pursuant to the Distribution Agreement and Buyseasons correspondence and phone calls relating thereto has been directed to Arizona. Similarly, correspondence and phone calls from the Plaintiffs has come from Arizona, not New York.

10. Since the date of filing of Plaintiffs' Complaint and before, Buyseasons has acted to remove allegedly infringing copyrighted and trademarked material from the Web Site and any other web sites owned by Buyseasons. As of the date of Plaintiffs' Complaint or shortly thereafter, I believe Buyseasons has addressed all of Plaintiffs' alleged copyright and trademark infringements by removing the allegedly infringing material from the internet. To the extent that any other Tom Arma copyrighted or trademarked material continues, unknown to Defendants, to appear on the Web Site or other Buyseasons' web sites, Buyseasons will act promptly to remove the same.

11. Based on the allegations in Plaintiffs' Amended Complaint, the primary witnesses in this case will likely be me, other Wisconsin employees of Buyseasons, Tom Arma, and Tom Arma's wife, who plays a substantial role in Plaintiffs' businesses. All Buyseasons' witnesses are located in Wisconsin. Upon information and belief, all of Plaintiffs' witnesses are located in Arizona. Most of the documents and other sources of proof in this case will also be located in Wisconsin, in light of the fact that Buyseasons operates and maintains its Web Site from Wisconsin, and has its corporate offices in Wisconsin.

Dated this 1474 day of January, 2008.

JALEM GETZ

Subscribed and sworn to Before me this 14 day of January, 2008

Notary Public

My commission expires on 9/26/10

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AZ CORPORATION COMMISSION FILED

> ARTICLES OF INCORPORATION EXP.

OF

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TOM ARMA COSTUMES, INC.

The undersigned, being natural persons capable of commetting acting as incompensates in adopting the following Articles of Incorporation for the purpose of incorporating a comperation (hereinalisz reflected to as "Corporation") for profit parameter to the provinces of the Arisons Rusiness Corporation Act.

The name of the corporation shall be TOM ARMA COSTUMES, Acticle 1: BKC.

The purposes for which the corporation is organized is the Article II: transaction of any or all lawful business the which corporations may be incorporated under the provinces of the Arizona Business Corporation Act, as they may be amended from time to time.

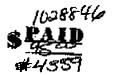
The comparation's initial business it intends to commet in the State Article III: of Arizons is as follows: creation and lineasing of photographic images.

The total number of shares which the emporation shall have Article IV: authority to leave is 1,000, all of which are without par value and classified as Common situaco.

The street address of the known place of business of the Article V: conjunction in the State of Arizons is 7 Cerro Pelon Lane, Tubes, AZ 85646

No holder of any of the shares of the corporation shall, as such holder, have any right to perchase or subscribe for any shares of any class which the corporation may issue or sail, whether or not such shares are exchangeable for any shares of the composition of any other class or classes, and whether such theres are issued out of the mumber of shame authorized by the Articles of Incorporation of the corporation as originally filed, or by eny emendment thereof, or out of shares of the corporation acquired by it offer the sense thereof; nor shall any holder of any of the shares of the corporation, as such holder, have any right to purchase or subscribe for any obligations which the corporation may have or sell that shall be convertible into, or section seals that for, any shares of the corporation of any class or clauses, or to which shall be attached or shell appartum any warrant or warrants or other instrument or instruments that shall comfor upon the holder thereof the right to subscribe for, or province from the corporation my sharps of my class or classes.

Article VII: The nature and address of the imitial statutory agent are National Registered Agents, Inc., 1850 North Central Avenue, Suite 1160, Phoenix, AZ 85004.



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Article VIII: The initial Board of Directors shall consist of one (1) Director.

The person who is to serve as Director until the first seemal meeting of shareholders or until his suncessor is elected and qualified, is:

NAME

**ADDRESS** 

TOM ARMA

7 Cento Pelon Lane, Tubec, AZ 8554

Article DX: The name and the address of the sole incorporator of the corporation is as follows:

NAME

ADDRESS

ROBERT I. REICHER

50 Best 42" Street, New York, NY 10017

The personal liability of all of the directors of the corporation to the corporation or its shareholders for money demages in any action taken or failure to take any action hereby eliminated except highlity for any of the failureing actions:

(a) The amount of a financial benefit received by a director to which the

director is not entitled.

An intentional infliction of horn; on the corporation or its charabuldet. **(b)** 

A violation of section 10-833 of the Azizona Corporation Act.

An intentional violation of ecisional law. (d)

Article XI: The period of duration of the corporation shall be perpensal.

Article XII: Completive voting shares of stock is authorized in the election of directors, and a placelity of the votes cast at a meeting at which a quorum is present shall clera

Article XIII: The Corporation shall indemnify any person who incurs expenses or liabilities by reason of the fact he or she is or was an officer, director, employee, or agent of the Corporation or is or was serving at the request of the conjunction as a director, officer, employee or agent of sucther Corporation, partnership, joint venture, trust or other enterprise. This indemnification shall be manufactory in all situations which 2895 22: 82 2123559359

indepolification is permitted by law.

Detect this dev of June 2005.

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ARTICLES OF INCORPORATION

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TOM ARMA, INC.

The undersigned, being natural persons espable of contracting, acting as incorporators in salerating the following Articles of incorporation for the purpose of incorporating a corporation (bereinster relieved to as "Cosporation") for profit pursuant to the provisions of the Armous Business Corporation Act:

Article I: The name of the corporation shall be TOM ARMA, INC.

Article II: The purposes for which the corporation is organized in the transaction of tary or all lawful business for which corporations may be incorporated under the provisions of the Arizona Business Corporation Act, as they may be amended from time to time.

Article III: The corporation's initial business it intends to conduct in the State of Arizona is an follows: creation and licensing of photographic images.

Article IV: The total number of shares which the corporation shall have authority to issue ls 1,000, all of which are without per value and classified as Common theres.

Article V: The street address of the known place of business of the corporation in the State of Arizona is 7 Carto Pelon Lane, Tubec, AZ 85646

No builder of any of the shares of the corporation shall, as such holder, have Article VI: any right to purchase or anisoribe for any shares of any class which the corporation may have or sell, whether or not such abuses are exchangeable for any abuses of the corporation of any other close or classes, and whether such theres are issued out of the number of shares authorized by the Articles of Incorporation of the corporation as originally filed, or by any amendment thereof, or not of shares of the corporation acquired by it after the issue thereof; nor shall any bolder of any of the shares of the corporation, as such holder, have any right to purchase or subscribe for any obligations which the corporation may have or sail that shall be conventible into, or exchanguable for, any shares of the corporation of any class or classes, or to which shall be attached or shall appearing any warrant or warrants or other instrument or instruments that shall conder upon the holder thereof the right to subscribe for, or purchase from the corporation may shares of any class or classes.

Article VII: The name and address of the initial statutory agent are National Registered Agents, Inc., 1850 North Central Avenue, Suite 1160, Phoenix AZ 85004.

Article VIII: The initial Bound of Directors shall consist of one (1) Director.



The pectors who is to serve as Director until the first samual meeting of shareholders or until his successor is elected and qualified, is:

NAME

BEN 121.5860 STUDY . CY 1020A39R.

ADDRESS

Limes

TOM ARMA

7 Cego Pakes Lana, Tulme, AZ 85646

Article IX: The name and the address of the sale incorporator of the corporation is as follows:

NAME

ADDRESS

ROBERT J. REICHER

50 East 42" Street, New York, NY 10017

The possecul liability of all of the directors of the corporation to the corposition or its altercholders for money damages in any action taken or failure to take any action hareby eliminated except fiability for any of the following actions:

- The smount of a finencial benefit received by a director to which the director is not autitled.
- An intentional infliction of harm on the corporation or its shareholder.
- A violation of section 10-833 of the Arisona Corporation Act.
- An intentional violation of crimbal law.

Article XI: The period of duration of the corporation shall be perpetual.

Article XII: Committive voting shares of stock is authorized in the election of directors, and a plurality of the water cost at a meeting at which a quorum is present shall elect.

Article XIII: The Corporation shall indemnify any person who incurs expenses or liabilities by reason of the fact he or she is or was an officer, director, employee, transport of the Corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another Corporation, partnership, John venture, trust or other enterprise. This indepenification shall be

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magdatory in all situations which indemnification is permitted by law.

Dated this / day of Justs, 2005

## Arizona Corporation Commission State of Arizona Public Access System

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Annual Reports

Scanned **Documents**  **Documents** Waiting To Be Examined

Amendments

Notices of Pending Administrative

Administrative **Dissolutions** and

Microfil

Dissolution Reinstatements

Corporate In	quiry
File Number: -1210869-3	Check Corporate Status
Corp. Name: TOM ARMA STUDIO, INC.	

#### **Domestic Address**

P.O. BOX 3091	
TUBAC, AZ 85646-3091	

## **Statutory Agent Information**

Agent Name: NATIONAL REGISTERED AGENTS INC	
Agent Mailing/Physical Address:	
638 N 5TH AVENUE	
PHOENIX, AZ 85003	
Agent Status: APPOINTED 06/20/2005	
Agent Last Updated: 07/05/2006	

# **Additional Corporate Information**

Corporation Type: BUSINESS	Business Type: PHOTOGRAPHY
Incorporation Date: 06/20/2005	Corporate Life Period: PERPETUAL
Domicile: ARIZONA	County: SANTA CRUZ
Approval Date: 06/20/2005	Original Publish Date: 08/22/2005

## **Officer Information**

	JULIE ARMA
PRESIDENT	SECRETARY

P.O. BOX 3091

TUBAC, AZ 85646-3091

Date of Taking Office: 06/20/2005

Last Updated: 12/20/2007

P.O. BOX 3091

TUBAC,AZ 85646-3091

Date of Taking Office: 06/20/2005

Last Updated: 12/20/2007

## **Director Information**

TOM ARMA
DIRECTOR
P.O. BOX 3091
TUBAC, AZ 85646-3091
Date of Taking Office: 06/20/2005
Last Updated: 12/20/2007

### **Annual Reports**

Next Due:	<b>Annual</b> 06/20/2	Report 008	E-FILE An Annual Report Online << Click Here		
H		FORMS For	Annual Reports To Be Printed And	Mailed << Click Here	lare at
File Year	File Month	Date Received	Reason Returned	Date Returned	Extension
2007	06	12/19/2007			-
2006	06	12/19/2007			-

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Document Number	Description	Date Received
01249253	ARTICLES	06/20/2005
01310465	PUB OF ARTICLES	08/22/2005
02261458	06 ANNUAL REPORT	12/19/2007
02261467	07 ANNUAL REPORT	12/19/2007
02252591	PUB OF MERGER	12/26/2007

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Date Received		Expedited
01/02/2008	CHANGE(S)	No

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#### **Amendments**

Amendment Date	Amendment Type	Publish Exception
11/22/2005	NAME CHANGE	WAIVE

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# Notices of Pending Administrative Dissolution

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12/11/2006	DELINQUENT ANNUAL REPORT

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# Administrative Dissolutions and Reinstatements

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Administrative Dissolution Date	Administrative Dissolution Reason	Reinstatement Date	
09/28/2007	AD-DISSOLVED - FILE A/R	12/19/2007	

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## Name Changes / Mergers

Description	Corporation Name	Date
CHANGED FROM	TOM ARMA, INC.	11/22/2005
MERGED FROM	TOM ARMA STUDIO, INC.	11/22/2005

#### Microfilm

Location	Date Received	Description

31877001781	06/20/2005	ARTICLES
	11/22/2005	MERGER
	04/21/2006	2006 ANNUAL REPORT/MAIL RETURN
11769028012	01/12/2007	DELINQUENT NOTICE/MAIL RETURN

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